Supreme Court, U.S.
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CATHY A. CATTERSON
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOLORES HOLGUIN,

Plaintiff-Appellant,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA, a political subdivision of the State of Arizona; et al.,

Defendants-Appellees.

No. 02-17415

D.C. No. CV-01-00482-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted July 21, 2003**

Before: LEAVY, HAWKINS, and RAWLINSON, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

APPENDIX A

Dolores Holguin appeals pro se the district court's judgment dismissing with prejudice his action challenging the compensation he received as relocation benefits from the Clifton, Arizona Flood Control Project when his mobile home was damaged in a 1983 flood. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Murphy v. Lanier*, 204 F.3d 911, 912 (9th Cir. 2000) (lack of subject matter jurisdiction); *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996) (failure to state a claim). We affirm.

The district court properly dismissed Holguin's claims against the state agency defendants because Holguin failed to show an express waiver of Eleventh Amendment immunity or make a proper request for prospective injunctive relief. *See Yakama Indian Nation v. Wash. Dep't of Revenue*, 176 F.3d 1241, 1245 (9th Cir. 1999).

The district court properly concluded that it lacked jurisdiction over Holguin's claims against the Federal Emergency Management Agency. *See Graham v. Fed. Emergency Mgmt. Agency*, 149 F.3d 997, 1001 & n.1 (9th Cir. 1998) (holding that the Stafford Act does not create a private right of action). The district court also properly concluded that Holguin failed to state a claim against the remaining defendants. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (holding that the district court is not required to accept as true conclusory allegations, unwarranted deductions of fact, or unreasonable inferences), *amended* by 275 F.3d 1187 (9th Cir. 2003).

We decline to consider Holguin's contentions raised for the first time on appeal. *See In re Jan Weilert RV, Inc.*, 315 F.3d 1192, 1199 (9th Cir. 2003), *amended by* 326 F.3d 1028 (9th Cir. 2003).

AFFIRMED.

FILED
SEP 30 2002
CATHY A. CATTERSON
CLERK, U.S.COURT OF APPEALS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

DOLORES HOLGUIN,

Plaintiff,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA, et al.,

Defendants.

No. CV 01-482 TUC FRZ

ORDER

Introduction

Plaintiff Dolores Holguin filed the present action on September 18, 2001 "under 49 CFR Part 24, 24.404 and PL 93 288 Section 5181, 5189 and Section 91-646 et al," for declaratory judgment and injunctive relief against five agency Defendants.

The Complaint sets forth two claims for declaratory and injunctive relief, alleging generally that Plaintiff was a flood disaster displacee and eligible for an exchange of property relocation "and was deliberately and falsely processed as a project displacee so as to appraise his property at a lower value and eliminate the responsibility for providing him with a comparable home."

Named as Defendants are Flood Control District of Greenlee County, Arizona; Arizona Department of Emergency Affairs, Division of Emergency Management; Department of Emergency

and Military Affairs for the State of Arizona; Acquisition Sciences Ltd.; and Federal Emergency Management Agency.

For purposes of discussion, Defendant Arizona Department of Emergency Affairs, Division of Emergency Management and Defendant Department of Emergency and Military Affairs for the State of Arizona will be referred to collectively as the State Agency Defendants interchangeably with "ADEM," consistent with all filings.

Count One of the Complaint sets forth a claim for "a declaratory judgment that defendants have violated Housing of last resort PL 91-646 Par 24.404 (c)(1)(iii) and (vi) which requires the construction of a standard conventional comparable replacement dwelling and subsequent exchange with the person displaced" requesting that the Court "render a declaratory judgment that Plaintiff is thereby entitled to a conventionally built home to replace the dwelling that was lost, and not a mobile home; such conventional home to have a concrete foundation and be built on site."

Count Two raises a claim for injunctive relief and requests "an injunction to prevent defendants from harming Plaintiff by withdrawing applicable benefits" and "enjoin the defendant from forcing the Plaintiff to accept the substandard mobile home under threat of losing benefits, and prevent defendant from wrongfully withholding monetary benefits from Plaintiff."

Plaintiff requests that judgment be entered against the named Defendants for "compensatory damages, including an order such that the defendants are required to purchase a conventionally built home, not a mobile home for Plaintiff;" "damages as allowed by 49 CFR Section 24.107 allowing reimbursement to the owner of the property all reasonable expenses and reasonable attorney fees incurred where the court renders judgment in favor of the property owner;" and costs and attorney's fees in accordance with state law.

The Complaint is inartfully and insufficiently plead. Although Plaintiff is proceeding pro se, the Complaint was filed on Plaintiffs behalf through the representation and appearance of counsel, who moved to withdraw subsequent to the filing of the Complaint.

The applicable statutory and regulatory provisions, which Plaintiffs Complaint inadequately and incorrectly refers to, are as follows: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq. (Public Law 91-646)[1] ("Uniform Reform Act"); The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, 42 U.S.C. § 5121, et seq., (Public Law 93-288)("Disaster Relief Act"); 49 C.F.R. Part 24, promulgated under of the Uniform Reform Act; and 42 U.S.C. § 5181 and 42 U.S.C. § 5189 of the Disaster Relief Act.

The focus of Plaintiff's claims is that he is entitled to an increase in the relocation assistance benefits awarded to him by ADEM under the Uniform Relocation Act, based on Plaintiff's belief that the Defendants are required to build him a new home to replace his "standard conventional comparable dwelling."

Plaintiff also filed on April 16, 2001, an untitled supplement which is a compilation of letters and documentation of communications with agencies, counsel, and financial documentation offered in support of his claims.

Before the Court for consideration are the following dispositive motions: (I) Rule 12(b) Motion to Dismiss by State Agency Defendants; (II) Defendant FEMA's Motion to Dismiss/ Motion for Summary Judgment; (III) Defendant Acquisition Sciences' Motion to Dismiss; In the Alternative, Motion for

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[1] As amended by Title IV of the "Surface Transportation and Uniform Relocation Assistance Act" of 1987 (Public Law 100-17)

More Definite Statement; and (IV) Rule 12(b) Motion to Dismiss by Flood Control District Defendant.

Legal Standard

All Defendants move for dismissal under Rule 12(b) of the Rules of Federal Civil Procedure for failure to state a claim, Rule 12(b)(6), and/or for lack of subject matter jurisdiction under Rule 12(b)(l).

In reviewing a motion to dismiss, all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002)(citing Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). "A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitled the plaintiff to relief." Id.

Furthermore, *pro se* pleadings shall be liberally construed in review of a defendant's motion to dismiss for failure to state a claim. Id. (citing Ortez v. Washington County Oregon, 88 F.3d 804, 807 (9th Cir.1996). Dismissal of a *pro se* complaint without leave to amend is proper only if it is clear that the deficiencies of the complaint can not be cured by amendment. Flowers v. First Hawaiian Bank, 295 F.3d 966, 976 (9th Cir. 2002)(citing Lucas v. Dept. of Corrections, 66 F.3d Cir. 245, 248049 (9th Cir. 1995)(per curiam).

A complaint will not be dismissed under Rule 12(b)(6) unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. Thompson v. Davis, 295 F.3d at 895.

The Plaintiff has the burden of proving jurisdiction in order to survive a motion to dismiss under Rule 12(b)(l). Sepp v. Tracy, 2002 WL 741644, *1 (D.Ariz.2002)(citing Tosco v. Comtys. for a Better Env't, 236 F.3d 495, 499 (9th Cir. 2000). A case is properly dismissed when the court lacks the statutory

authority or constitutional power to adjudicate the case. Id.

Facts

Following and in response to the 1983 Clifton Flood Disaster, the Clifton Flood Control Project was enacted in 1994, and superceded in 1998, to "prevent future damages to persons or property otherwise subject to severe periodic flooding by the San Francisco River."[2] Pursuant to this resolution, the Flood Control District and Arizona Division of Emergency Management entered into an intergovernmental agreement.

Plaintiff owned a property he inherited from his mother at 112 North Patterson's Addition Road, Clifton, Arizona, which fell within the Clifton Flood Control Project.

After numerous communications, much confusion, and administrative appeals, Plaintiff was ultimately determined to be eligible to receive relocation benefits from the Clifton Flood Control Project as an "owner-occupant" of the Clifton property and determined to be eligible for relocation benefits and compensation for the property, in a sum of $65,560 ($62,060 for relocation and $3,500 for the acquisition), at the time condemnation proceedings were pending.[3]

Plaintiff asserts that "[t]he ADEM offered on May 13, 1998 a mobile home and mandated a September 15, 2000 deadline to acquire it or lose all relocation benefits."[4]

Plaintiff asserts that he informed ADEM that the $62,060 mobile home was not a conventional home and therefore unacceptable, and that Plaintiff, "under duress to comply with the upholding of his relocation benefits of an estimated $131,815

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[2] Resolution 98-01-FCD

[3] See September 21, 1999 Letter from counsel for Acquisition Sciences.

[4] Complaint, ¶ 6.

conventional standard comparable replacement home,"[5] acquired a $73,500 mobile home, which "is not a conventional home as defined under 24.404 et al."[6]

Plaintiff asserts that as a resident of Clifton, Arizona, and a 1983 Federal Flood Disaster displacee, he was entitled to relocation under the Uniform Relocation Act and "eligible and qualified for relocation housing payment under PL 91646 Part 24.204(c)(3) and housing of last resort was instituted under PL 91646 Part 24.205(a)(2)."

Discussion

Under the legal standard required for consideration of Defendants' motions to dismiss under Rule 12(b), FED.R.CIV.P., Plaintiff has been afforded the benefit of consideration of all his filings in the review and analysis of whether anything Plaintiff has presented might be construed as sufficient to set forth a claim under the Uniform Relocation Act or Disaster Relief Act.

Plaintiff fails to meet the basic pleading requirements under Rule 8(a), FED.R.CIV.P. It does not appear, however, that granting leave to amend is appropriate under the legal standard of review for a motion to dismiss pursuant to Rule 12(b)(6).

In "Plaintiff Motion to Dismiss the /Defendants Motion to Dismiss," filed in opposition to Defendant Flood Control District's dispositive motion, Plaintiff sets forth his best argument for establishing liability against the individually named agency Defendants, which is nonetheless far from sufficient to state a claim.

Plaintiff fails, however, to address the issues of immunity, statute of limitations, and administrative time and review

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[5] Plaintiff bases this amount on an informal estimate for replacement housing from a contractor.

[6] Complaint, ¶¶ 7, 8 & 10.

preclusion issues. Because the Court finds that the Plaintiff has failed to state a claim under Rule 12(b)(6), there is no need to reach these issues on the merits. Dismissal, however, is also appropriate under immunity and time preclusion as to the State Agency Defendants and the county Defendant Flood Control District, as well as under the applicable statute of limitations periods as to Defendants Acquisition Sciences and FEMA. FEMA is also immune from actions challenging the agency's discretionary functions.

Plaintiff's claims appear to stem in great part from his frustration with the administrative relocation and condemnation process under the Clifton Flood Control Project, to which the Arizona Division of Emergency Management conceded "that ADEM acknowledges that there has been considerable confusion in your particular case, and that correspondence and other information you have received has been contradictory."[7]

Most of the confusion occurred with Plaintiff's eligibility status determination, which Plaintiff appears to believe is material or determinative of his relocation benefits.[8]

Plaintiff also, in great part, challenges, collectively, the Defendants' alleged noncompliance with the provisions of the Uniform Relocation Act and the Disaster Relief Act. However, Plaintiff, as a private citizen, does not have standing to challenge the actions of agencies generally under the Acts.

Simply stated, Plaintiff fails to state what specific acts each or any of the named Defendants did, and how, under the administrative and statutory provisions, any act is actionable,

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[7] July 30, 1998 Letter of Clarification to Plaintiff from Counsel for Defendant Acquisition Sciences.

[8] Counsel for Defendant Acquisition Sciences attempted to explain this to counsel who Plaintiff had consulted with. See November 19, 1998 Letter addressed to J.R. Evans, Willoghby & Evans, P.C.

and under what authority Plaintiff would be entitled to the relief requested.

Although Plaintiff fails to address any time or review preclusion issues, by his own admissions in the Complaint, that he "acquired a $73,500.00 mobile home under duress to comply with the upholding of his relocation benefits of an estimated $131,815 conventional standard comparable replacement home by a reputable area contractor," Plaintiff had full knowledge of the "acts" for which he seeks redress, at the latest, before September 11, 2000,[9] and clearly is precluded from pursuing any administrative review proceeding at this time.

I. Rule 12(b) Motion to Dismiss by State Agency Defendants

Defendants Arizona Department of Emergency Affairs, Division of Emergency Management and the Department of Emergency and Military Affairs of the State of Arizona move for dismissal under Rule 12(b)(1), for lack of subject matter jurisdiction, and Rule 12(b)(6), for failure to state a claim on the grounds that (l) the State Agencies are immune from suit in this matter under the Eleventh Amendment to the United States Constitution; (2) the named State Agencies are not jural entities under Arizona law susceptible to suit in any judicial proceeding; (3) Plaintiff has failed to allege compliance with the Arizona claims statute and therefore, any action for damages is barred; (4) the Court lacks subject matter jurisdiction to conduct judicial review of final administrative actions of the State Agency Defendants; (5) claims for judicial review of administrative action of state agencies are time barred under A.R.S. § 12-821; (6) claims for damages against state agency Defendants are time barred under A.R.S. § 12-821.01; and (7) the statutes and rules cited by Plaintiff do not require the State Agency Defendants to

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[9] Buyers Closing Statement

build the Plaintiff a new home, and therefore, fail to state a claim upon which relief can be granted.

Plaintiff alleges that ADEM and the other Defendants "have refused to comply with 24,404 et al, and have not provided a comparable conventional replacement dwelling," which Plaintiff asserts requires the construction of a new replacement comparable dwelling and the purchase of land by the displacing agency and subsequent exchange with the displacee. Plaintiff offers in support of his opposition an estimate from January 1984, asserting that the "$11,650 repair estimates reafirms that Plaintiff's home as a standard conventional dwelling for a comparable home determination under 24.404(c)(1)(III)(vi)."

Plaintiff also offers an informal estimate from a contractor, of $137,000, for the construction of a new "replacement" home.

Plaintiff focuses only on ADEM's alleged noncompliance under the Uniform Relocation Act and suggests the improper allocation of relief funds. Plaintiff argues that "[t]he issue to be considered in this Federal District Court is the standard conventional comparable replacement dwelling for the flood disaster displacee required under PL 91646 part 24.404(c)(l(ii)(vi).

Plaintiff fashions his arguments merely on select statutory and regulatory language provisions to substantiate his claims and fails to address the issues raised. In his opposition and at the time of hearing, Plaintiff failed to address the issues of Eleventh Amendment immunity and state claim and statute of limitation time preclusion.

The Court finds that Plaintiff's claims against the State Agencies are barred by the Eleventh Amendment. The Eleventh Amendment affords states protection from suits brought by citizens in federal court. See Douglas v. California Department of Youth Authority, 271 F.3d 812, 817-818, as amended 271 F.3d 910 (9th Cir. 2001), reh'g enbanc denied, 285 F.3d 1226

(9th Cir.) cert. denied. --- U.S. ---, 122 S.Ct. 2591 (2002)(citing College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board., 527 U.S. 666, 669, 119 S.Ct. 2219, 2223 (1999). There are only three exceptions to this general rule. Id. First, a state may waive its Eleventh Amendment defense. Id. (citing College Savings Bank, 527 U.S. at 670, 119 S.Ct. at 2223). Second, Congress may abrogate the States' sovereign immunity by acting pursuant to a grant of constitutional authority. Id. (citing Kimel v. Florida Board of Regents, 528 U.S. 62, 80, 120 S.Ct. 631, 644 (2000). Third, under the *Ex parte Young* doctrine, the Eleventh Amendment does not bar a "suit against a state official when that suit seeks ...prospective injunctive relief." Id. (quoting Seminole Tribe of Florida v. Florida, 517 U.S. 44, 73, 116 S.Ct. 1114, 1132 (1996).

As the State Agency Defendants assert, the State has not waived its Eleventh Amendment immunity. Nor does either the Uniform Relocation Act or the Disaster Relief Act abrogate Arizona's Eleventh Amendment immunity. Furthermore, there is no proper request for injunctive relief before the Court. Accordingly, the State Agency Defendants, specifically, Defendant Arizona Department of Emergency Affairs, Division of Emergency Management and Defendant Department of Emergency and Military Affairs for the State of Arizona, are immune from suit in this action under the Eleventh Amendment.

Moreover, Plaintiff has failed to allege compliance with the Arizona claims statute and therefore, any action for damages is barred.

Because this Court lacks jurisdiction, it is not necessary to address the issues of time and claim preclusion, however, it is clear from the provision of A.R.S. § 12-821, requiring that "[a]ll actions against any public entity or public employee shall be brought within one year after the cause of action accrues and

not afterward," that Plaintiffs claims are also time barred."[10]

Notwithstanding the foregoing, the statutes and rules cited by Plaintiff do not require the State Agency Defendants to build or find the Plaintiff a new home as asserted, and thus, fail to state a claim upon which relief can be granted. Accordingly, the State Agency Defendants' Rule 12(b) motion to dismiss shall be granted.

II. Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment

Defendant Federal Emergency Management Agency, the only federal agency named in the Complaint, moves to dismiss the Complaint on the bases (1) FEMA had no involvement in the Plaintiff's award of relocation benefits and is therefore entitled to summary judgment; and (2) the Complaint fails to state a claim against FEMA.

Offered in support of FEMA's argument that FEMA was not involved in the award of Plaintiff's relocation benefits is a declaration by the custodian of records, stating that there are no FEMA records pertaining to Plaintiff's relocation and that if FEMA were involved, such records would have been available.

Defendant FEMA argues that in the event the Court determines that summary judgment is not appropriate, the Court should dismiss the Complaint against it for failure to state a claim or require that the Plaintiff file a more definite statement. Defendant FEMA argues that Plaintiff has failed to comply with the pleading requirements of Rule 8(a)(2), Fed.R.Civ.P., to properly place FEMA on notice of the claims against it.

Defendant FEMA also asserts that if any claims are cognizable, such would be untimely under the six year statute

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[10] "[C]laims against a public entity or public employee must be filed within one hundred eighty days after the cause of action accrues." A.R.S. §12-821.01.

of limitation period for claims against the United States, because, if any allegation that can be construed against FEMA exists, such relates to the providing of assistant in 1983 and 1984.

Filed in response to Defendant FEMA's motion is "Plaintiff Motion to Disregard and Dismiss/Defendant Motion to Dismiss/ Motion for Summary Judgement" in which Plaintiff attempts to only explain the provisions under which he proceeds. Plaintiff fails, however, to oppose Defendant FEMA's request for dismissal, and at best, implies FEMA was made aware of Plaintiff's concerns based on correspondence between FEMA and ADEM through Congressmen Hayward and McCain, and that "Fema and ADEM are termed to be 'Associates in Office,'" and that "Fema's recognition and the position of their flood disaster displacees' outcome has been clowded and misrepresented by ADEM's advisement to FEMA."

The Stafford Act does not provide for a private right of action. Graham v. Federal Emergency Management Agency, 149 F.3d 997, 1001 (9th Cir. 1998).

Moreover, the allegations, set forth in Plaintiff's response to FEMA's motion, are insufficient, even as such allegations are set forth in the Complaint, to state a claim against FEMA.

Based on the foregoing, the Court finds that FEMA's motion to dismiss should be granted as a matter of law.

III. Defendant Acquisition Sciences' Motion to Dismiss; In the Alternative, Motion for More Definite Statement

Defendant Acquisition Sciences moves to dismiss this action against it, asserting that the Complaint "falls woefully short of alleging any identifiable claim against ASL upon which relief can be granted to the Plaintiff" and "fails to state any basis or theory upon which the Court could determine that ASL is liable..."

Defendant Acquisition Sciences further asserts that "[e]ven read in a light most favorable to the Plaintiff, the most the

Complaint alleges is that ASL, acting as an agent for one or more of the other Defendants, communicated to Plaintiff a date certain upon which he had to either accept certain relocation benefits or lose his ability to claim them" but "does not allege that ASL established that date, that it dictated that such date would be a deadline or that it ever had any authority to do either.

Defendant Acquisition Sciences further asserts that the Complaint does not allege that it was in any specific way wrongful, or in violation of any federal or state statute, and, therefore, the Complaint should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

In opposition to Defendant Acquisition Sciences' motion, Plaintiff attempts to fashion an argument, in addition to his general assertions of noncompliance, that a rental assistance payment recommendation of December 30, 1997, removed the $65,880 calculation of May 29, 1996, and that Acquisition Sciences "was involved and responsible for the calculation for the false Rental assistance Payment ... responsible for the ...calculation ... as a Project Displacee and instrumental in the Sept. 15, 2000 deadline set on the Plaintiff to purchase a $62,060.00 mobile home or lose all relocation benefits."[11]

The Court finds that Plaintiff fails to substantiate any of his claims or his allegations against Acquisition Sciences.

There is no factual or legal basis to support Plaintiff's allegations that, although undisputedly entitled to relocation under the Uniform Relocation Act, he is "eligible and qualified for relocation housing payment under PL 91646 Part 24.204(c)(3) and housing of last resort ... under PL 91646 Part 24.205(a)(2)."[12]

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[11] "Plaintiff Motion to Dismiss/Defendant Motion to Dismiss," page 3.

[12] Id., ¶4

The Court therefore finds that Acquisition Sciences' motion to dismiss must also be granted.

IV. Rule 12(b) Motion to Dismiss by Flood Control District Defendant

The final Defendant, Flood Control District of Greenlee County, moves for dismissal on the bases (1) Plaintiff has failed to allege compliance with A.R.S. 12-821.01, thereby barring any action for damages; (2) Plaintiff is barred from proceeding against the Flood Control District because all claims against the Flood Control District have already been adjudicated; (3) The Plaintiff has failed to allege any wrongful conduct on the part of the Flood Control District other than to group the District with other agency Defendants; (4) Plaintiff's claim for judicial review of administrative action of state agencies is time barred by A.R.S. § 12-821; (5) claims for damages against state agency Defendants is time barred by A.R.S. § 12-821.01; and (6) the Complaint fails to state a claim upon which relief can be granted because the statutes and rules cited by Plaintiff do not require the Flood Control District to build Plaintiff a new home.

In opposition to the Flood Control District's motion to dismiss, Plaintiff asserts that "[t]he Flood Control District has joined together with Agency ADEM in the classification of Project displacees to include the flood disaster displacees so that the standard conventional comparable housing of last resort not be complied under 24.404 (c)(1)(iii)(vi) as stated in the March 30, 1998 ADEM Director's letter.

The Court finds that Plaintiff's claims are precluded under the applicable provisions of A.R.S. § 12-821, and further fail to state a claim upon which relief can be granted.

Conclusion

Although Plaintiff asserts that "ADEM and the other Defendants have refused to comply with provisions under the

Uniform Relocation Act and the Disaster Relief Act, Plaintiff fails to allege sufficiently, and there appears to be no set of facts that could show, what any individual Defendant agency has done wrong.

Therefore, construing all filings by Plaintiff liberally and taking all allegations of material fact as true and construed in the light most favorable to Plaintiff, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted, and thereby, shall dismiss the Complaint pursuant to Rule 12(b)(6).

The Court further finds that the deficiencies of the Complaint cannot be cured by amendment, see Flowers, 295 F.3d at 976, and that it appears beyond doubt that Plaintiff can prove any set of facts in support of his claims that would entitle him to relief. See Thompson v. Davis, 295 F.3d at 895. This action shall therefore be dismissed with prejudice.

Based on the foregoing,

IT IS HEREBY ORDERED that "Rule 12(b) Motion to Dismiss by State Agency Defendants" [Doc. #10] is **GRANTED;**

IT IS FURTHER ORDERED that "Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment" [Doc. #19] is **GRANTED;**

IT IS FURTHER ORDERED that "Defendant Acquisition Sciences' Motion to Dismiss" [Doc. #22] is **GRANTED;**

IT IS FURTHER ORDERED that the **"Rule 12(b) Motion to Dismiss by Flood Control District Defendant"** [Doc. #24] is **GRANTED;**

IT IS FURTHER ORDERED that all other pending matters are denied as moot: Judgment shall be entered accordingly.

Dated this 27th day of September, 2002.

s/ HONORABLE FRANK R. ZAPATA
United States District Judge

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SEP 30 2002

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY_____s/_____DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DOLORES HOLGUIN,

Plaintiff,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA; et al.,

Defendants.

JUDGEMENT IN A CIVIL CASE

Case No. CV-01-00482-FRZ

X **DECISION BY COURT.** This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED that "Rule 12(b) Motion to Dismiss by State Agency Defendants" [Doc. #10] **is GRANTED;**

IT IS FURTHER ORDERED that Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment" [Doc.#19] **is GRANTED;**

IT IS FURTHER ORDERED that "Defendant Acquisition Sciences' Motion to Dismiss" [Doc.#22] **is GRANTED.**

IT IS FURTHER ORDERED that the "Rule 12(b) Motion to Dismiss by Flood Control District Defendant" [Doc.#24] **is GRANTED.**

IT IS ORDERED AND ADJUDGED that this action is **DISMISSED WITHOUT PREJUDICE.**

September 27, 2002
Date

RICHARD H. WEARE
Clerk

s/ M. Michelle Mejia
(By) Michelle Mejis, Deputy Clerk

Copies to: ALL PARTIES, FRZ, JB

_____FILED _____LODGED
_____RECEIVED _____COPY

OCT 4 2002

CLERK, U.S. DISTRICT COURT
DISTRICT OF ARIZONA
BY_____s/_____DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DOLORES HOLGUIN,

Plaintiff,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA; et al.,

Defendants.

JUDGEMENT IN A CIVIL CASE
AMENDED as to dismissed with prejudice only

Case No. CV-01-00482-FRZ

X **DECISION BY COURT.** This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED that "Rule 12(b) Motion to Dismiss by State Agency Defendants" [Doc. #10] **is GRANTED;**

IT IS FURTHER ORDERED that Defendant FEMA's Motion to Dismiss/Motion for Summary Judgment" [Doc.#19] **is GRANTED;**

IT IS FURTHER ORDERED that "Defendant Acquisition Sciences' Motion to Dismiss" [Doc.#22] **is GRANTED.**

IT IS FURTHER ORDERED that the "Rule 12(b) Motion to Dismiss by Flood Control District Defendant" [Doc.#24] **is GRANTED.**

IT IS ORDERED AND ADJUDGED that this action is **DISMISSED WITH PREJUDICE.**

October 4, 2002
Date

RICHARD H. WEARE
Clerk

s/ M. Michelle Mejia
(By) Michelle Mejis, Deputy Clerk

Copies to: ALL PARTIES, FRZ, JB

FILED
NOV 06 2003
CATHY A. CATTERSON, CLERK
CLERK, U.S.COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOLORES HOLGUIN,

Plaintiff-Appellant,

v.

FLOOD CONTROL DISTRICT OF GREENLEE COUNTY, ARIZONA, a political subdivision of the State of Arizona; et al.,

Defendants-Appellees.

No. 02-17415

D.C. No. CV-01-00482-FRZ
Arizona
(Tucson)

ORDER

Before: LEAVY, HAWKINS, and RAWLINSON,
Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

No further filings will be accepted in this closed appeal.

APPENDIX C